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MAILED
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OFFICE OF PETITIONS

In re Patent No. 5,679,081
Issue Date: October 21, 1997 :
Application No. 08/614,134 : DECISION ON PETITION
Filed: March 12, 1996 :
Patentee: Robert Santilli :

This is a decision on the petition under 37 CFR 1.378(b), filed October 27, 2010, to accept the unavoidably delayed payment of the maintenance fee for the above-identified patent.

The petition under 37 CFR 1.378(b) is DISMISSED.

The above-identified patent issued October 21, 1997. Accordingly, the second maintenance fee could have been paid during the period from October 21, 2004 through April 21, 2005 without surcharge, or with a surcharge of \$65 during the period from April 22, 2005 through October 21, 2005. No maintenance fee having been received, the patent expired on October 22, 2005.

37 CFR 1.378(b) provides that:

Any petition to accept an unavoidably delayed payment of a maintenance fee must include:

- (1) The required maintenance fee set forth in 37 CFR 1.20(e) through (g);
- (2) The surcharge set forth in 37 CFR 1.20(i)(1); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

The instant petition does not meet requirement (3) above.

Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 USC 133. This is a very stringent standard. Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. In addition, decisions are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

Petitioner states that he was unavoidably delayed in paying the maintenance fee because his "income was not sufficient enough to support [his] household, pay tuition for [his] children, and cover all incidentals." Petitioner states that he took "reasonable care to ensure that the fee would be timely paid." Lastly, petitioner states that he does not recall how or when he became aware of the expiration.

When a petitioner asserts financial hardship, the Office would like to see copies of any bank records, tax returns, and W-2 forms for the period in question.¹ Here, the period in question is from the date the patent expired, October 22, 2005, up until the filing date of the instant petition, October 27, 2010. In addition, the Office requests that petitioner provide an accounting of his expenses throughout the period.

Furthermore, a showing of unavoidable delay must enumerate the steps petitioner took to ensure timely payment of the maintenance fee, and must explain how and when petitioner became aware of the expiration. Here, petitioner has provided no details of the steps he had in place to ensure the timely payment of the maintenance, nor has petitioner explained how and when he became

¹ Petitioner is encouraged to redact any identifying information he would wish to remain confidential - social security number, bank account numbers, etc.

aware of the expiration.

Conclusion:

Any request for reconsideration of this decision must be filed within **TWO MONTHS** of the mailing date of this decision. Any such petition for reconsideration must be accompanied by the \$400 petition fee set forth in §1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Accordingly, on request for reconsideration, it is extremely important that petitioner supply any and all relevant information and documentation in order to meet his burden of showing unavoidable delay.

If on request for reconsideration, the delayed payment of the maintenance fee is not accepted, then the \$3995 submitted for the maintenance fee and the surcharge set forth in §1.20(i) are subject to refund following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Petitioner may request a refund of the maintenance fee and surcharge by writing to: Mail Stop 16, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of the last decision rendered should accompany the request for refund. The \$400 fee for requesting reconsideration is not subject to refund.

Further correspondence should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (571)273-8300
 Attn: Office of Petitions

Telephone inquiries specific to this decision may be directed to the undersigned at (571)272-3207.



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